

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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Roy Rusch McCarter,

Plaintiff,

v.

State of Nevada, et al.,

Defendants.

Case No. 2:22-cv-00641-ART-DJA

Order

Before the Court is pro se Plaintiff Roy Rusch McCarter's motion for appointment of counsel. (ECF No. 14). In that motion, Plaintiff also opposes the inclusion of a magistrate judge on his case under 28 U.S.C. § 636 and includes certain facts regarding the underlying allegations in his case. Because the Court finds that Plaintiff has not demonstrated exceptional circumstances, it denies the motion for appointment of counsel. The Court also addresses Plaintiff's arguments regarding magistrate judge jurisdiction. Finally, the Court *sua sponte* extends the deadline for Plaintiff to file an amended complaint.

I. Motion for appointment of counsel.

Courts have authority to request that an attorney represent any person unable to afford counsel. 28 U.S.C. § 1915(e)(1). Whether to appoint counsel is within the discretion of the district court and requires a showing of exceptional circumstances. *Agyeman v. Corrections Corp. of America*, 390 F.3d 1101, 1103 (9th Cir. 2004). To determine whether exceptional circumstances exist, courts consider the likelihood that the plaintiff will succeed on the merits as well as the plaintiff's ability to articulate his claims "in light of the complexity of the legal issues involved." *Id.* Neither factor is dispositive, and both must be viewed together. *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986).

1 Here, Plaintiff has not shown exceptional circumstances for the appointment of counsel.
2 It is not clear that Plaintiff's complaint will succeed on the merits because it has not passed
3 screening. Plaintiff's arguments in support of appointing counsel include that he has requested
4 counsel on numerous occasions (however this is the first motion for appointment of counsel he
5 has filed in this case). But these arguments are not sufficient for the Court to find that appointing
6 counsel is appropriate here. Finally, while Plaintiff's claims have not yet passed screening, the
7 Court has given him an opportunity to amend. And Plaintiff has otherwise proven his ability to
8 articulate his arguments in moving papers. The Court thus denies his motion for appointment of
9 counsel without prejudice.

10 **II. Plaintiff's objections to magistrate judge jurisdiction.**

11 Plaintiff asserts that he would prefer a district judge, rather than a magistrate judge, to
12 make certain decisions in his case, in particular to screen his complaint. However, under 28
13 U.S.C. § 636(b)(1)(A), "a judge may designate a magistrate judge to hear and determine any
14 pretrial matter pending before the court," subject to certain exceptions. And under the District of
15 Nevada's General Order 2023-11, "[u]nless the court otherwise directs, upon filing, the Clerk
16 must assign to a Magistrate Judge all motion and applications to proceed in forma pauperis
17 ("IFP")."¹ Plaintiff has not demonstrated how the undersigned acted in the absence of
18 jurisdiction. Nor has he separately moved for recusal.

19 **III. Extension of time to amend the complaint.**

20 The deadline for Plaintiff to amend his complaint passed on May 9, 2024. (ECF No. 13).
21 Plaintiff missed that deadline and filed his motion for appointment of counsel after that deadline.
22 However, given Plaintiff's pro se status, the Court will *sua sponte* extend the deadline for
23 Plaintiff to file an amended complaint. Plaintiff must file an amended complaint on or before
24 **September 18, 2024.**

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¹ This General Order can be found online at [https://www.nvd.uscourts.gov/court-](https://www.nvd.uscourts.gov/court-information/rules-and-orders/general-orders/)
28 [information/rules-and-orders/general-orders/](https://www.nvd.uscourts.gov/court-information/rules-and-orders/general-orders/)

1 **IT IS THEREFORE ORDERED** that Plaintiff's motion for appointment of counsel
2 (ECF No. 14) is **denied without prejudice**.

3 **IT IS FURTHER ORDERED** that Plaintiff shall have until **September 18, 2024** to file
4 an amended complaint. **Failure to timely comply with this order may result in a**
5 **recommendation to the district judge that this case be dismissed.**

6 **IT IS FURTHER ORDERED** that the Clerk of Court is kindly directed to send Plaintiff
7 a copy of this order.

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9 DATED: August 19, 2024

A handwritten signature in blue ink, appearing to read 'D. Albrechts', is written over a horizontal line.

DANIEL J. ALBREGTS
UNITED STATES MAGISTRATE JUDGE